

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

MASSACHUSETTS BAY INSURANCE
COMPANY,

Plaintiff,

vs.

FORT BENNING FAMILY
COMMUNITIES, LLC, JOHN CALE
BROWN, SR., and DARLENA BROWN

Defendants.

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CASE NO. 4:15-CV-75-CDL

O R D E R

The outcome of this declaratory judgment action depends on whether Georgia or Maryland law applies. Under Georgia law, Plaintiff Massachusetts Bay Insurance Company has no duty to provide coverage to Defendant Fort Benning Family Communities because the claimed injuries fall under the pollution exclusion in the policies. See *Ga. Farm Bureau v. Smith*, 784 S.E.2d 422, 426 (Ga. 2016). Under Maryland law, the injuries are not excluded from coverage. See *Sullins v. Allstate Ins. Co.*, 667 A.2d 617, 624 (Md. 1995). On September 27, 2016, the Court denied Massachusetts Bay's motion for summary judgment based on Georgia law, rejecting Massachusetts Bay's argument that the Georgia courts would apply the "presumption of identity" to determine which law applies.

Massachusetts Bay moves the Court to reconsider the September 27, 2016 Order (ECF No. 41) in light of the Supreme Court of Georgia's March 6, 2017 decision in *Coon v. The Medical Center, Inc.*, 797 S.E.2d 828 (Ga. 2017). In *Coon*, the Georgia Supreme Court expressly embraced the presumption of identity, finding that in the absence of a foreign statute on point, "at least with respect to a state where the common law is in force, a Georgia court will apply the common law as expounded by the courts of Georgia." *Id.* at 834. Fort Benning Family Communities concedes that Massachusetts Bay is entitled to summary judgment (ECF No. 43). Defendants John and Darlena Brown have not responded to the motion for reconsideration and the time for doing so has passed.

Based on the parties' motions and the *Coon* decision, the Court grants Massachusetts Bay's motion for reconsideration (ECF No. 41) and declares that: (1) Georgia law governs this action; and (2) under Georgia law, Massachusetts Bay has no duty to defend or indemnify Fort Benning Family Communities in the underlying action. The Clerk is instructed to enter final judgment in favor of Massachusetts Bay.

IT IS SO ORDERED, this 15th day of May, 2017.

S/Clay D. Land

CLAY D. LAND
CHIEF U.S. DISTRICT COURT JUDGE
MIDDLE DISTRICT OF GEORGIA